

ENTERED

April 03, 2024

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION****HERITAGEMARK, LLC an OKLAHOMA §
LIMITED LIABILITY COMPANY, §***Plaintiff,* §**VS.** §**CIVIL ACTION NO. 4:22-CV-04513****UNUM LIFE INSURANCE COMPANY OF §
AMERICA, §***Defendant.* §
§**ORDER ADOPTING REPORT AND RECOMMENDATION**

Pending before the Court is Defendant Unum Life Insurance Company of America's ("Defendant's") Motion to Dismiss Plaintiff Heritagemark, LLC's ("Plaintiff's") Complaint for failure to state a claim. ECF No. 15. This Court referred the case to the Magistrate Judge to conduct all pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1). ECF No. 29. On February 8, 2024, Judge Palermo issued a Report and Recommendation ("R&R") recommending that Defendant's Motion to Dismiss be granted in part and denied in part. ECF No. 45.

Defendant filed a timely partial objection to the R&R. ECF No. 46. Defendant objects to the portions of the R&R that recommend denying Defendant's Motion to Dismiss. Plaintiff did not file objections to the R&R.

If timely objections are filed, a district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636. "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* However, if no timely

objection is made, the court need only review the R&R to determine whether it is “clearly erroneous or contrary to law.” *Garcia v. Sessions*, 2018 WL 6732889, at *1 (S.D. Tex. Nov. 7, 2018) (quoting *Quinn v. Guerrero*, 863 F.3d 353, 358 (5th Cir. 2017)).

Neither party objects to the R&R’s recommended dismissal of Plaintiff’s extracontractual claims for breach of implied covenant of good faith and fair dealing as well as conversion. Finding no clear error, the Court **ADOPTS** the R&R’s recommendation and **GRANTS** Defendant’s Motion to Dismiss with respect to these claims. Plaintiff’s extracontractual claims are **DISMISSED WITH PREJUDICE**.

As required by 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of the portions of the R&R to which Defendant objected. However, the Court agrees with the conclusions and the reasoning of the R&R. Accordingly, the Court hereby **ADOPTS** the R&R’s recommendations and **DENIES** Defendant’s Motion to Dismiss with respect to Plaintiff’s breach-of-contract and declaratory judgment claims.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 31st of March, 2024.

A handwritten signature in black ink, appearing to read "Keith P. Ellison", written over a horizontal line.

Keith P. Ellison
United States District Judge